

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

MADOFF FAMILY LLC, ESTATE OF MARK D.
MADOFF, and ANDREW MADOFF, individually
and in his capacity as Executor of the ESTATE OF
MARK D. MADOFF,

Defendants.

Adv. Pro. No. 10-03485 (SMB)

**STIPULATION AND ORDER SUBSTITUTING MARTIN FLUMENBAUM,
SOLELY IN HIS CAPACITY AS THE EXECUTOR OF THE ESTATE OF
ANDREW H. MADOFF, AND THE ESTATE OF ANDREW H. MADOFF FOR
DECEASED DEFENDANT ANDREW MADOFF IN THIS PROCEEDING**

WHEREAS, on July 29, 2010, Irving H. Picard (the “Trustee”), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the substantively consolidated estate of Bernard L. Madoff, filed a complaint in the above-captioned adversary proceeding;

WHEREAS, the Trustee subsequently filed an Amended Complaint in the above-captioned adversary proceeding, on September 1, 2010;

WHEREAS, Defendant Andrew H. Madoff passed away on September 3, 2014;

WHEREAS, Martin Flumenbaum was designated as the Executor of the Estate of Andrew H. Madoff under Andrew H. Madoff’s Last Will and Testament, dated July 8, 2014;

WHEREAS, on September 10, 2014, Martin Flumenbaum petitioned the Surrogate’s Court for Probate and Letters Testamentary and of Trusteeship in the Probate Proceeding No. 2014-3416 entitled Probate Proceeding, Will of Andrew Madoff aka Andrew H. Madoff;

WHEREAS, on September 12, 2014, The Honorable Nora S. Anderson issued a Decree Admitting Will to Probate in the Probate Proceeding No. 2014-3416 entitled “Probate Proceeding, Will of Andrew H Madoff, aka Andrew Madoff,” pursuant to which Letters Testamentary and of Trusteeship were directed to be issued to Martin Flumenbaum;

WHEREAS, Martin Flumenbaum, a formal representative of Andrew Madoff’s Estate, is a proper party to substitute for deceased defendant Andrew Madoff in this proceeding pursuant to Rule 25 of the Federal Rules of Civil Procedure and Rule 7025 of the Federal Rules of Bankruptcy Procedure, solely in his capacity as a representative of Andrew Madoff’s Estate;

WHEREAS, Rule 25 of the Federal Rules of Civil Procedure, applicable to this adversary

proceeding pursuant to Rule 7025 of the Federal Rules of Bankruptcy Procedure, provides: “If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed”;

WHEREAS, the 90-day time period was set to expire on December 2, 2014;

WHEREAS, the parties agreed to extend the time period for substitution of these parties in light of settlement discussions and negotiations; and

WHEREAS, pursuant to subsequent Stipulations, So Ordered by this Court on December 2, 2014 (ECF No. 58), January 15, 2015 (ECF No. 59), February 3, 2015 (ECF No. 60), February 27, 2015 (ECF No. 63), March 13, 2015 (ECF No. 66), March 27, 2015 (ECF No. 67) April 27, 2015 (ECF No. 68), June 4, 2015 (ECF No. 71), July 8, 2015 (ECF No. 74) and January 8, 2016 (ECF No. 77), the Trustee’s time for substitution was further extended to April 8, 2016.

IT IS HEREBY STIPULATED AND AGREED that:

1. The Estate of Andrew H. Madoff and Martin Flumenbaum, as Executor of the Estate of Andrew H. Madoff, and solely in his capacity as Executor of the Estate of Andrew H. Madoff, are hereby substituted for deceased defendant Andrew H. Madoff in the above-captioned adversary proceeding.

2. This Stipulation and Order is intended by all parties hereto to be solely for the purpose of substituting the correct parties to comply with Rule 25 of the Federal Rules of Civil Procedure and Rule 7025 of the Federal Rules of Bankruptcy Procedure. The parties to this Stipulation and Order reserve all rights, claims and/or defenses they may have and entry into this Stipulation and Order shall not impair or otherwise affect any such rights, claims and/or

defenses.

3. The Estate of Andrew H. Madoff and Martin Flumenbaum are deemed to have accepted service of the Trustee's Amended Complaint and all other filings in the above-captioned adversary proceeding made prior to the date of this Stipulation.

4. This Stipulation may be executed in counterparts and all such counterparts shall together constitute one and the same agreement.

5. Original signatures are not required as copies or facsimile of executed counterparts of this Stipulation are deemed an original and binding.

6. The Clerk of the Court is hereby directed to amend the caption to read as indicated in Exhibit A to this Stipulation and Order.

Dated: April 8, 2016
New York, New York

WINDELS MARX LANE & MITTENDORF LLP

BY: /s/ Howard L. Simon
156 West 56th Street
New York, New York 10019
Telephone: (212) 237-1000
Facsimile: (212) 262-1215
Howard L. Simon
hsimon@windelsmarx.com

*Special Counsel to Irving H. Picard, Trustee for the
SIPA Liquidation of of Bernard L. Madoff Investment
Securities LLC and Bernard L. Madoff*

MARTIN FLUMENBAUM

BY: /s/ Andrew Ehrlich

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019-6064
Telephone: (212) 373-3191
Facsimile: (212) 492-0191
Andrew Ehrlich
Email: aehrlich@paulweiss.com

Executor of the Estate of Andrew H. Madoff

SO ORDERED:

Dated: April 8th, 2016
New York, New York

/s/ STUART M. BERNSTEIN
HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

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Executor of the Estate of Mark D. Madoff, THE
ESTATE OF ANDREW H. MADOFF and MARTIN
FLUMENBAUM, solely in his capacity as Executor
of the Estate of Andrew H. Madoff.

Defendants.

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